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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 359

STATE OF MINNESOTA,

Petitioner,

vs.

TRUSTEES OF HAMLINE UNIVERSITY OF MINNE-
SOTA,

Respondents.

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MINNE-
SOTA AND SUPPORTING BRIEF.**

JAMES F. LYNCH,

County Attorney of Ramsey County;

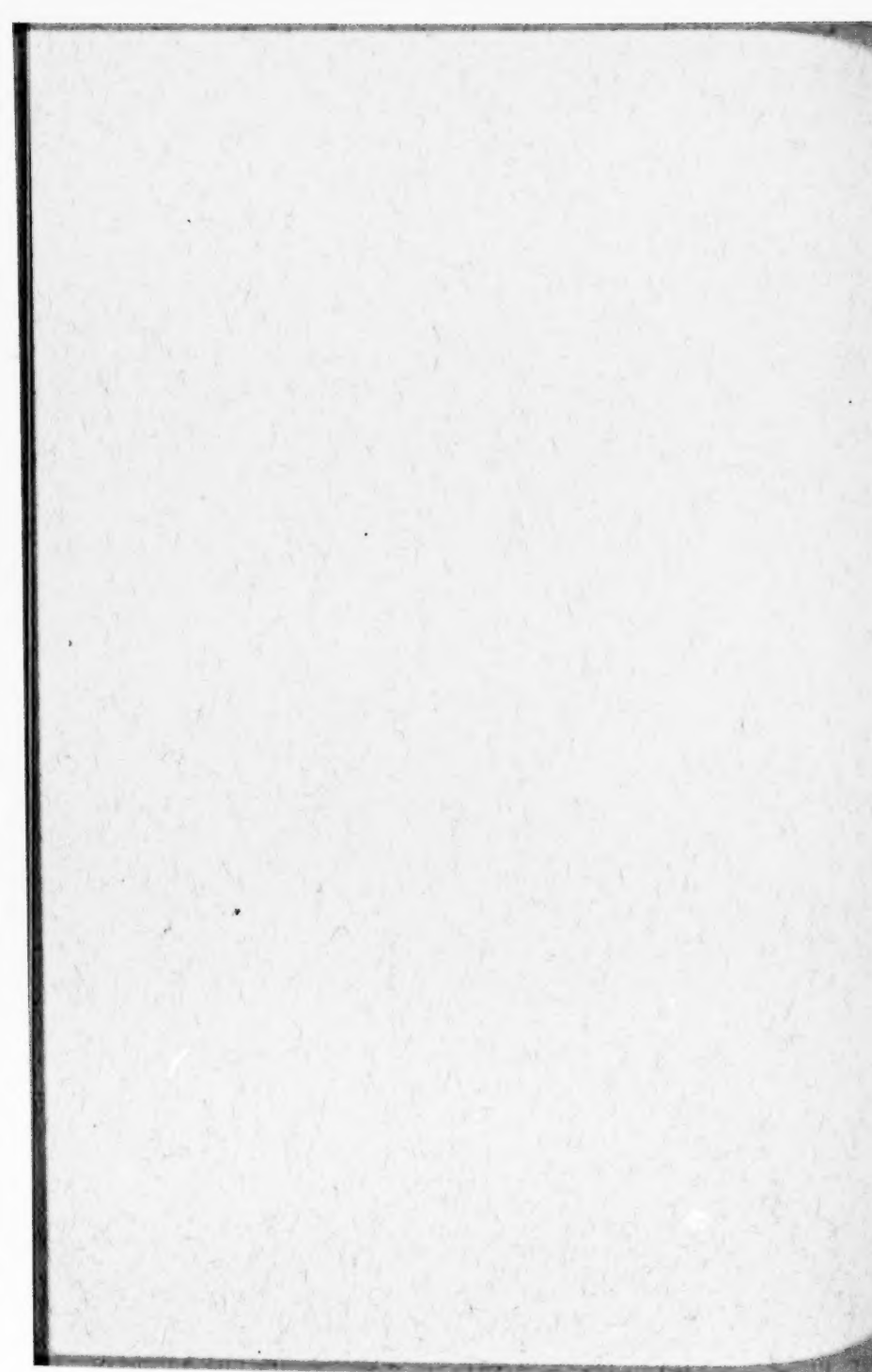
ANDREW R. BRATTER,

Assistant County Attorney,

328 Court House,

St. Paul, Minnesota,

Counsel for Petitioner.



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**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF MINNE-
SOTA.**

*To the Honorable The Chief Justice and Associate Justices
of the Supreme Court of the United States:*

Your petitioner, the State of Minnesota, hereby petitions for review on writ of certiorari of the decision and judgment of the Supreme Court of Minnesota, being the court of last resort of that State, and respectfully shows:

Statement of the Matters Involved.

The State of Minnesota duly levied taxes for the years 1937, 1938 and 1939 upon the income-producing real estate in question owned by the respondent but which was not used by it for school purposes. The taxes being unpaid, were included in the delinquent tax lists (R. 144 to 152

inc.). The respondent filed answers for each year claiming the property to be exempt from taxation as provided in its Charter, Minnesota Territorial Laws 1854, Chapter 43, Section 11 which provides, among other things that "• • • all corporate property belonging to the institution, both real and personal is, and shall be free from taxation." (R. 1 to 25 inc.)

The court of first instance (District Court of Ramsey County, Minnesota) held that respondent's property is exempt from taxation under Chapter 43, Laws 1854; that said Charter constitutes a contract and is protected against impairment by the Federal Constitution (R. 208). Upon appeal to the State Supreme Court this judgment was affirmed. (R. 262.)

Jurisdiction.

Jurisdiction is conferred upon this court to review the decision and judgment of the Supreme Court of Minnesota by writ of certiorari under Sec. 237(b) of the Judicial Code (28 U. S. C. A. Sec. 344(b)).

The exemption, if valid, exists only by virtue of Chapter 43, Laws of the Territory of Minnesota for 1854. Income-producing property such as that here involved is not exempt under the constitution and statutes of the State of Minnesota. *State v. Carleton College*, 154 Minn. 280, 191 N. W. 400; *Trustees of Pillsbury Academy v. State*, 204 Minn. 365, 283 N. W. 727, aff'd per curiam, 308 U. S. 506, 60 S. Ct. 92, 84 L. E. 433. Such an exemption could not have been granted by the legislature of the State. *State v. Great Northern Railway Company*, 106 Minn. 302, 119 N. W. 202; *Great Northern Railway v. State of Minnesota*, 216 U. S. 206, 30 S. Ct. 344, 54 L. E. 446.

The construction of an Act of Congress prescribing the authority of a territorial legislature, together with its enactments herein set forth, presents a proper and substan-

tial question for review. *Welch v. Cook*. 97 U. S. (VII Otto) 541, 24 L. E. 1112; *Christianson v. King County*, 239 U. S. 356, 36 S. Ct. 114, 60 L. E. 327.

A federal right is involved in determining whether the act of the territorial legislature and its acceptance constitutes a contract protected by Article 1, Section 10 of the Constitution of the United States. Especially is this true where the validity of the territorial act is challenged on the ground that it violates the Constitution of the United States. The passage of Chapter 43, Laws of the Territory of Minnesota for 1854 was the exercise of an authority under a power derived from the United States. *McLean v. Denver & Rio Grande R. R. Co.*, 203 U. S. 38, 27 S. Ct. 1, 51 L. E. 78.

Also necessarily involved is the validity of certain constitutional and statutory provisions of the State of Minnesota as applied to the property of the respondent. The validity of these was challenged on the ground that if they were construed to subject respondent's income-producing property to taxation, the obligation of contract would be impaired. *Millsaps College v. City of Jackson*, 275 U. S. 129, 48 S. Ct. 94, 72 L. E. 196.

Your petitioner made and filed in the court of first instance a written Motion for Judgment on the pleadings on the ground that the exemption provision of Chapter 43 of the Laws of the Territory of Minnesota for 1854 was null and void under the constitution and statutes of the United States and the State of Minnesota (R. 29-32 incl.). The Motion for Judgment directly challenged the power of the territorial legislature to (1) grant an exemption in perpetuity of property based solely on ownership, (2) contract away the right of taxation, (3) make an irrevocable contract of exemption, (4) limit the right of the future state to tax, and (5) that such contract was terminated upon the

adoption of the State Constitution and was repugnant to Article 9 thereof.

The particular federal constitutional and statutory provisions involved are:

1. Article 1, Secs. 8 and 9 of the Constitution of the United States.
2. Fifth Amendment to the Constitution of the United States.
3. Tenth Amendment to the Constitution of the United States.
4. The Act of Congress of March 3, 1849 (Organic Act of Minnesota):

"Sec. 6. And be it further enacted, That the legislative power of the territory shall extend to all rightful subjects of legislation, consistent with the constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States; nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents. All the laws passed by the legislative assembly and governor shall be submitted to the Congress of the United States, and, if disapproved, shall be null and of no effect."

5. Act of Congress of May 11, 1858 (Act of Admission):

"* * * That the state of Minnesota shall be one, and it is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original states in all respects whatever."

The particular constitutional and statutory provisions of the State of Minnesota involved are:

- (1) Article 9 of the State Constitution as adopted in 1857 and as amended in 1906, subjecting all property to taxation

on a uniform basis except certain classes expressly exempted. (R. 140-141.)

(2) Secs. 272.01 and 272.02 as amended, Minnesota Statutes 1941 (Secs. 1974 and 1975, Mason's 1927 Minnesota Statutes, as amended), subjecting all real and personal property to taxation except certain classes expressly exempted.

At the conclusion of the testimony, the State again moved for judgment upon the same grounds asserted in the first motion in addition to the contention that if a contract did result from the enactment of Chapter 43, it was terminated by failure to operate a school from 1869 to 1880 (R. 172-176 inc.) which motion was denied.

The same constitutional and statutory objections urged in the court of first instance were raised by assignments of error and argument on appeal to the State Supreme Court (245).

The decision of the lower court was affirmed by the Supreme Court of the State of Minnesota in an opinion filed May 19, 1944 and is reported in — Minn. —, 14 N. W. (2d) 773 (R. 249).

The judgment sought to be reviewed was entered in the Supreme Court of Minnesota on the 31st day of May, 1944. (R. 262).

The date of application for the writ may be taken as the date the petition is filed in the office of the Clerk of this Court.

Questions Presented.

First: Was it within the power of the territorial legislature under the provisions of the Constitution of the United States and the Act of Congress of March 3, 1849 (Organic Act of Minnesota) hereinbefore set forth to grant an irrevocable exemption in perpetuity based solely on ownership of property by the respondent?

Second: Did the grant of exemption constitute a contract binding on the State of Minnesota?

Third: Did the Act of Congress of May 11, 1858 admitting the State of Minnesota into the Union on an equal footing with the original states in all respects whatsoever operate to abrogate or repeal the charter grant of exemption?

Fourth: Is the State of Minnesota obliged to recognize the charter exemption as valid and binding upon it in spite of the requirements of the constitution of the state that all property, except that specifically exempted by it, shall be taxed?

Fifth: By its charter the corporation was organized for the purpose of "establishing, maintaining and conducting an institution of learning for the education of both sexes:". The record shows that the teaching functions of the institution were suspended from 1869 to 1880 inclusive (R. 79, f. 236). In this connection, the question is presented whether respondent forfeited its special privilege of immunity from taxation by failing to maintain and conduct an institution of learning during that period of time.

Reasons for Allowance of Writ.

1. This court has never directly passed on the federal question as to the power of a territorial legislature to grant an exemption similar to the one contained in respondent's charter, nor its effect on the taxing power of a future state. The question though was presented but not decided in *Berryman v. Whitman College*, 222 U. S. 334, 32 S. Ct. 147, 56 L. E. 225, wherein an act of territorial legislature of Washington granting a similar tax exemption to Whitman Seminary was construed by this court.

2. The Supreme Court of Minnesota in its opinion cited in support of its holding the decisions of this court in *Home of the Friendless v. Rouse*, 75 U. S. (8 Wall.) 430, 19 L. E.

495, and *Washington University v. Rouse*, 75 U. S. (8 Wall.) 439, 19 L. E. 498. It is the petitioner's position that the doctrine of those cases is not applicable to territorial enactments, and, even as to the power of the states, the decisions are erroneous and should be overruled by this court. The doctrine has, from the beginning, met with vigorous dissent from a strong minority of this court and has been vigorously protested by some state courts. See dissenting opinions in *Washington University v. Rouse*, *supra*; *State Bank of Ohio v. Knoup*, 57 U. S. (16 How.) 369, 14 L. E. 977; *Trustees of Phillips Exeter Academy v. Exeter*, 90 N. H. 472, 11 Atl. (2d) 569, 33 Atl. (2d) 665; Cooley's Constitutional Limitations, 8th Ed., Vol. 1, Ch. IX, page 571 and cases cited; Page on Contracts, 2nd Ed., Vol. 6, Sec. 3668. Recently this court has indicated that the *Rouse* cases should be re-examined and re-considered. *Gorman, et al. v. Washington University*, 314 U. S. 604, 62 S. Ct. 301, 86 L. E. 486; 316 U. S. 98, 62 S. Ct. 962, 86 L. E. 1300.

3. It is made clear in all of the decided cases that the rule that a state legislature may bargain away forever its taxing power is not applicable where either the state constitution prohibits discrimination in matters of taxation or where the state constitution or statute reserves the right to modify, alter, amend or repeal.

As hereinafter discussed, the Organic Act of the Territory of Minnesota and the United States Constitution prohibited discrimination in tax legislation, and Congress reserved the right to modify, alter, amend or repeal the Laws of the Territory. Congress and the State were free to revoke this exemption by respectively enacting the Act of Admission and the State Constitution.

The reasons for prohibiting a state legislature from bargaining away forever the taxing power of the state are even more cogent and persuasive as applied to a territorial

legislature. The power of a state to tax is inherent and sovereign as distinguished from a territory whose power to tax is derivative. *Domenech v. National City Bank*, 294 U. S. 199, 55 S. Ct. 366, 79 L. E. 857.

The power to tax has been declared by this court to be "the most basic power of government." *Wisc. v. J. C. Penney*, 311 U. S. 435, 444, 61 S. Ct. 246, 249, 85 L. E. 267. It should be determined whether a territorial legislature, as an agency of Congress, can deprive a state from exercising this basic power.

Wherefore, your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the Seal of this Honorable Court directed to the Supreme Court of the State of Minnesota, commanding that court to certify and to send to this court for its review and determination a full and complete transcript of the record and all proceedings in the above entitled matter.

JAMES F. LYNCH,
County Attorney,
Ramsey County, Minnesota;
ANDREW R. BRATTER,
Assistant County Attorney,
328 Court House,
St. Paul, Minnesota,
Counsel for the Petitioner.

